

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

v.

WILLIAM GRAULICH, IV,

Defendant.

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Crim. No. 11-0641 (RBK)

OPINION

ROBERT B. KUGLER, U.S.D.J.

On May 18, 2012, this Court entered judgment in this criminal matter after Defendant pled guilty to one count of conspiracy to commit wire fraud. Defendant received a sentence of seventy months imprisonment. Defendant appealed and the United States Court of Appeals for the Third Circuit affirmed. *See United States v. Graulich*, 524 F. App'x 802 (3d Cir. 2013).

As Defendant's criminal matter was progressing, Defendant was also a defendant in a civil action brought against him by the Securities and Exchange Commission in this District Court before United States District Judge William J. Martini. (*See* Civ. No. 09-4355.) On January 13, 2014, Defendant filed in that civil action a document requesting "the District Court to appoint council [sic] in order to file a 2255 motion." (*See* Civ. No. 09-4355 Dkt. No. 82.) On January 29, 2014, Judge Martini ordered the Clerk to *nunc pro tunc* file Defendant's request to appoint counsel as this Court handled Defendant's criminal proceedings and would have jurisdiction over a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255.

As indicated above, Defendant seeks the appointment of counsel so that he can pursue a motion under § 2255. Defendant does not have a constitutional right to counsel his pursuing his motion to vacate, set aside or correct his sentence under § 2255. *See Reese v. Fulcomer*, 946

F.2d 247, 263 (3d Cir. 1991), *superseded on other grounds by*, 28 U.S.C. § 2254(d); *United States v. Connolly*, Crim. No. 07-575, 2010 WL 3271768, at *1 (D.N.J. Aug. 16, 2010) (citations omitted). However, 18 U.S.C. § 3006(a)(2)(B) provides that the court has discretion to appoint counsel where “the court determines that the interests of justice so require . . .” In *Reese*, the Third Circuit explained that in determining whether counsel should be appointed, a court “must first decide if the petitioner has presented a nonfrivolous claim and if the appointment of counsel will benefit the petitioner and the court. Factors influencing a court’s decision include the complexity of the factual and legal issues in the case, as well as the pro se petitioner’s ability to investigate facts and present claims.” *Reese*, 946 F.2d at 263-64.

Defendant has not demonstrated to the Court that the interests of justice warrant appointing counsel for his anticipated but not yet filed § 2255 motion. Defendant states no grounds on which he will challenge his conviction/sentence. Thus, this Court has no basis to conclude that Defendant’s § 2255 motion will present complex factual and legal issues or that such a yet to be filed motion presents nonfrivolous claims. Furthermore, this Court has no basis to believe otherwise that Defendant would be capable of representing himself in pursuing a possible § 2255 motion. Therefore, Defendant’s request for the appointment of counsel will be denied without prejudice and an appropriate order will be entered.

DATED: February 10, 2014

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge